

**BEFORE THE
NATURAL RESOURCES COMMISSION
OF THE
STATE OF INDIANA**

IN THE MATTER OF:

RULE AMENDMENTS ADDING)	Administrative Cause
312 IAC 18-3-24 TO REGULATE)	Number 10-083E
THOUSAND CANKERS DISEASE)	(LSA Document #12-511(F))

**REPORT ON RULE PROCESSING, PUBLIC HEARING,
WRITTEN COMMENT, HEARING OFFICERS ANALYSES AND
RECOMMENDATION REGARDING FINAL ADOPTION**

1. RULE PROCESSING

For consideration is the proposed 312 Ind. Admin. Code § 18-3-24 to declare the walnut twig beetle¹ (*Pityohthorus juglandis*) and *Geosmithia morbid sp. nov.*, a fungus that kills walnut trees, as pests or pathogens under Ind. Code § 14-24-3-9. With the declaration, each would be regulated under IC § 14-24-4. The subject is currently addressed through a temporary rule as LSA Document #12-494(E) which is posted in the *Indiana Register* at 20120822-IR-312120494ERA. The temporary rule is scheduled to expire on August 29, 2013.

The Natural Resources Commission gave preliminary adoption to 312 IAC § 18-3-24 on September 20, 2011. As reported in the pertinent portions of the September 20 minutes:

Phil Marshall...presented this item. He said “thousand cankers disease” is the newest disease providing a major threat to forest resources. The disease is caused by an insect called the “walnut twig beetle” and the fungus “*Geosmithia mobida*”. Marshall added that the disease was “detected in eight States in the West over the last eight to ten years, primarily on black walnut trees that are native to the Eastern United States but not native to the West. We are seeing this disease slowly working through and killing black walnut trees in the West. It is a very serious risk for black walnut resources in the Eastern United States.” Indiana has a “very large walnut resource.” The black walnut tree is potentially the “most valuable” tree in the forest. Indiana nurseries “sell anywhere up to a half million black walnut seedlings a year.”

Marshall said the proposed rule would restrict all movement or introduction of any walnut product, but primarily logs and lumber, which could carry the fungus or the insect from the eight Western States. Last year, the fungus was also discovered in Knoxville, Tennessee, and approximately two months ago, in Richmond, Virginia and in Eastern Pennsylvania. The proposed rule would regulate the movement of walnut material from Pennsylvania, Virginia, Tennessee and the eight Western States. “It would be

¹ Thousand cankers disease is the result of an interaction between an insect and a fungal pathogen. The spores of the fungus *Geosmithia morbid* are carried on the walnut twig beetle (*Pityophthorus juglandis*). As the beetle burrows into a branch of a walnut tree to feed and reproduce, it infects the tree tissue with the pathogen. The fungus destroys the vascular tissue of the tree, causing small, black lesions called cankers to form at beetle entry points. Thousands of beetles at a time may attack a single tree, potentially delivering a lethal dose of the pathogen. http://www.in.gov/dnr/entomolo/files/ep-Indiana_TCD_handout.pdf

required under the permanent rule that logs brought in would be under a compliance agreement with DNR.” Marshall added “the walnut logs would be inspected by an agricultural official who would verify whether or not the logs came from a county unaffected by the disease and also verify that the logs have also been inspected. The logging company would be required to provide a 24-hour notice to [DNR] for the arrival of logs. Finally, the logs would recheck for any evidence of the disease.”

Marshall explained the Department has been operating under an “external quarantine” for more than a year. “The industry has been acceptable to this and has been working with the DNR, and we are giving them priority at all times.” He then recommended preliminary adoption of 312 IAC 18-3-24 to regulate thousand cankers disease.

Bob Wright moved to approve preliminary adoption of 312 IAC 18-3-24 to regulate thousand cankers disease. Thomas Easterly seconded the motion. Upon a voice vote, the motion carried.

The “Notice of Intent” to adopt 312 IAC § 18-3-24 was posted to the INDIANA REGISTER at 20120829-IR-312120511NIA on August 29, 2012. The notice identified Megan Abraham, Fumigation and Compliance Inspector with the Division of Entomology and Plant Pathology, as the “small business regulatory coordinator” for purposes of IC § 4-22-2-28.1.

As specified by Executive Order, proposed fiscal analyses of the rule proposal were submitted, along with a copy of the proposed rule language and a copy of the posted Notice of Intent, to the Office of Management and Budget on August 29, 2012. In a letter dated September 12, 2012, Adam M. Horst, Director, Office of Management and Budget, recommended that the proposed rule amendments be approved.

On September 20, 2012, the Division of Hearings submitted the rule proposal to the Legislative Services Agency, along with the “Statement Concerning Rules Affecting Small Business” (also known as the “Economic Impact Statement”). The Notice of Public Hearing was submitted to the Legislative Services Agency on the same day. On October 3, 2012, the following were posted to the INDIANA REGISTER: the text of the proposed rule at 20121003-IR-312120511PRA; the notice of public hearing along with the justification statement (IC 4-22-2-24(d)(3)) at 20121003-IR-312120511PHA; and the Economic Impact Statement at 20121003-IR-312120511EIA. Following receipt of an “Authorization to Proceed” from the Legislative Services Agency on September 20, 2012, the Division of Hearings caused a Notice of Public Hearing to be published by the Indianapolis Newspapers in the Indianapolis *Daily Star*, a newspaper of general circulation in Marion County Indiana, on September 28, 2012. In addition, the Commission’s rulemaking docket (<http://www.in.gov/nrc/2377.htm>) was updated to include

links to the published rule proposal, notice of the public hearing, and other information required by IC § 4-22-2-22.5.

The Statement Concerning Rules Affecting Small Businesses (the “EIS”), as required under IC 4-22-2.1-5, and submitted by the Small Business Regulatory Coordinator, indicates:

Economic Impact Statement
LSA Document #12-511

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

Estimated Number of Small Businesses Subject to this Rule:

There are currently five primary timber companies that purchase materials from Thousand Canker Disease (TCD) infested states and are affected by this rule. It is estimated that five more timber companies could be affected by this rule. The 180 secondary hardwood manufacturers (businesses that make furniture and other walnut products from kiln dried lumber) are not expected to be impacted by this rule. This rule is not anticipated to impact companies that do not deal with the timber industry.

Estimated Average Annual Reporting, Record Keeping, and Other Administrative Costs Small Businesses Will Incur for Compliance:

It is estimated that each business will incur a cost of 0.5 man days (or four hours) to complete the paperwork to initiate a compliance agreement for TCD. Assuming that the average employee earns \$15 per hour, the estimated annual cost to initiate a compliance agreement is \$60 per year. It is also assumed that the fees associated with obtaining a phytosanitary certificate in the state of origin will not be borne by the small businesses of Indiana. The current general practice for companies under compliance agreements is that either the business selling the material or the exporting/shipping company obtains the compliance agreement at the state of origin and pays any fees.

Estimated Total Annual Economic Impact on Small Businesses to Comply:

The anticipated impact is administrative costs outlined above in amount of \$60 per year per business that will be affected by this rule. With a maximum of 10 businesses that may be impacted by the rule, the total economic impact to small businesses in Indiana may be \$600 per year.

Justification Statement of Requirement or Cost:

Costs associated with rule with an estimated maximum impact to the entire state being \$600 per year are minimal in comparison to the damage that can be done to the walnut industry should this pest and pathogen complex be allowed to invade Indiana. Potential loss of walnut resource in Indiana would be upwards of \$800,000,000 (information taken from the saw log value from 2004-2008 Indiana forest inventory analysis). In addition, the wildlife that utilizes the walnut tree as a food source would be heavily impacted.

Regulatory Flexibility Analysis of Alternative Methods:

There are three alternatives to this rule:

- (1) allow all materials into the state without determining the state of origin;
 - (2) prohibit all out of state origin walnut material from entering the state; or
 - (3) prohibit/ regulate all walnut material originating in TCD positive states from entering the state.
- Allowing all material into the state without regard to the state of origin could be catastrophic to walnut timber industry. The current estimated value of walnut in Indiana is \$800,000,000 in saw log value, several million in veneer log value, as well as the aesthetic and wildlife value that cannot be estimated. These estimates do not take into account the loss of logging, hauling and sawmill jobs that could occur if TCD is established in Indiana causing walnut trees to die. Without inspecting the logs upon arrival, the state of Indiana would be creating an avenue in which an infestation of the pest and pathogen complex could easily enter and spread throughout the state.

Prohibiting all out-of-state walnut material or even material originating in TCD positive states would also be damaging to the walnut timber industry. Several hundred thousand dollars worth of walnut saw logs and veneer logs enter Indiana each year from Tennessee alone. If more states find TCD in their forests, these high value walnut logs would not be allowed to enter Indiana, which would cause reduced revenue in Indiana businesses. The proposed rule provides protection to Indiana's walnut resources while still allowing companies to conduct business with TCD positive states.

On September 20, 2012, the Economic Impact Statement was forwarded to the Indiana Economic Development Corporation (the "IEDC"). The IEDC forwarded its comments on October 19, 2012.

October 19, 2012

Jennifer Kane
Indiana Natural Resources Commission
Indiana Government Center North, Room N501
100 North Senate Avenue
Indianapolis, Indiana 46204



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One North Capitol, Suite 700
Indianapolis, Indiana 46204

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Dear Ms. Kane:

Pursuant to IC 4-22-2-28, the Indiana Economic Development Corporation ("IEDC") has reviewed the economic impact analysis for small business associated with rule changes contained in LSA Document 12-511 and proposed by the Indiana Natural Resources Commission ("NRC"). The proposed rule adds 312 IAC 18-3-24 pertaining to entomology and plant pathology to regulate a certain beetle and certain fungus that kill walnut trees.

The economic impact statement prepared by the NRC indicates that five or more timber companies will be impacted by the proposed rule. The total annual economic impact is estimated by the NRC to be approximately \$60 per business, which is composed of the administrative costs associated with completing a compliance agreement for Thousand Canker Disease (TCD). The NRC also estimates that the potential loss to the Indiana walnut industry could reach \$800,000,000 (its current estimated value) if the proposed rule is not adopted to protect the trees from disease.

The IEDC does not object to the economic impact to small businesses associated with the proposed rule. If you have any questions about the comments contained herein please contact me at 234-3997 or eshields@iedc.in.gov.

Regards,

Eric P. Shields
Policy Director

2. PUBLIC HEARING AND WRITTEN COMMENTS

A public hearing was held as scheduled on October 29, 2012 to consider proposed 312 IAC § 18-3-24. Phil Marshall, Indiana State Entomologist, and Megan Abraham, Fumigation and

Compliance Inspector, attended the public hearing on behalf of DNR's Division of Entomology and Plant Pathology. No member of the public attended. The comment period was extended to and closed on November 2, 2012.

One written comment was received regarding proposed 312 IAC § 18-3-24 as follows:

Liz Jackson, Executive Director, American Walnut Manufacturers Association

The American Walnut Manufacturers Association (AMWA) represents hardwood lumber producers who produce more than 50% of the walnut in the United States. Our organization recognizes the serious threat of Thousand Cankers Disease and the potential economic disaster if walnut trees in Indiana were impacted by TCD. We encourage state officials to recognize the economic importance of the lumber processing industry and the hardships that these quarantines could have on commerce and trade. We need to be permitted as an industry to produce without rules which would cripple us and devalue the important walnut resource. If rules must be put into place, they must be workable and not add to our costs.

We have three specific requests to change the current language of Proposed Rule 312 IAC 18-3-24:

1. In Section 24(c)(1), the definition of "bark" includes an additional one-half (1/2) inch of wood beyond the bark. Scientific evidence shows that this disease complex is not present in the wood beyond the cambium and the additional one-half inch of wood requirement is extremely cost prohibitive to industry. We request that the words "including an additional one-half (1/2) inch of wood" be stricken from this section.
2. In section 24(c)(4), the definition of "regulated area" includes the entire states of Pennsylvania, Tennessee, and Virginia. The disease has been found in very few counties in these states and we feel that it is overly prohibitive to quarantine the three states in their entirety. For example, the state of Pennsylvania, after extensive delimiting surveys, only has one county with TCD. We believe it is an unreasonable burden on the industry to quarantine these entire states. We request that the definition of "regulated area" include only the quarantined and buffered counties in Pennsylvania, Tennessee, and Virginia determined to have TCD as defined by US regulatory authorities.
3. Section 24(c)(5)(C)(FF) defines exempted plant parts and includes processed lumber "one hundred percent (100%) bark free, kiln dried with square edges..." The requirement for square edges is not necessary if the material is kiln dried, as all insects will be killed by the drying process. Furthermore, producing 100% square edged material is not practical in our business and would be cost prohibitive. We request that the words "with square edges" be stricken from this paragraph.

The above recommendations 2 and 3 were requested when Ohio developed their quarantine language and Ohio modified its quarantine to include these recommendations.

Further, we encourage the state to work with industry and scientists to discover methods of treatment which are workable, will not impede commerce, and without undue costs. We welcome the opportunity to work together with state agencies to retain the important walnut resource while keeping our industry strong. We feel it critical that our industry play an intimate role in helping Indiana as well as the other Eastern walnut producing states to author a Compliance Agreement that will provide and allow "industry doable" movement, trade, and commerce of walnut products specifically green lumber, kiln dried lumber, and logs from quarantined areas that exist today and/or that may exist in the future. A workable Compliance Agreement is critical to keep the industry healthy and viable and also to maintain the commercial value of our most important domestic hardwood, the species of walnut. Needless to say if walnut becomes commercially

valueless by compromising industry commerce and trade the species will surely risk extinction!

We appreciate your strong consideration of our requests and would be happy to discuss them with you further. Thank you for allowing us to submit comments on this rule.

3. HEARING OFFICERS ANALYSES AND RECOMMENDATION REGARDING FINAL ADOPTION

On December 5, 2012, Phillip Marshall, Indiana State Entomologist, filed a memorandum in response to comments submitted by Liz Jackson. He supplemented the memorandum in following-up discussions with the Hearing Officers. His memorandum and supplemental comments are considered in the analyses that follow.

Jackson suggested the definition of “bark” at 312 IAC § 18-3-24(c)(1) should be amended by removing the language “including an additional one-half (1/2) inch of wood”. She urged that “evidence supports the fungal disease complex is not present in the wood beyond the cambium and the additional one-half inch of wood requirement is extremely cost prohibitive to industry”.

As posted in the *Indiana Register* following preliminary adoption, the definition of “bark” would provide:

(1) “Bark” means the natural bark of a tree. The term applies to the bark around the knots and bark pockets between annual-growth rings, including an additional one-half (1/2) inch of wood and the vascular cambium.

In his memorandum, the Indiana State Entomologist responded to Jackson’s suggested amendment:

The definition for bark created in this rule is the initial definition for bark under Indiana Administrative Code (IAC). The addition of this definition for bark in this rule will also add this definition to 312 IAC 1 and 312 IAC 18-1 and thus will be used for future and other rules for tree pests in which the inclusion of ½ inch of wood is needed to address the regulated management of plant products and parts impacted by pests (insects, fungi, bacteria and other diseases). The inclusion of ½ inch of wood provides needed management requirements and additional safe guarding measures to prevent the spread of pests that live in the bark, cambium and ½ inch of wood.

In mature walnut trees, a major characteristic of walnut is deeply furrowed, black bark. The bark is dark brown and divided with deep fissures into rounded edges. To ensure that all of the cambium (which is where the disease complex is present) is removed by the industry, a half of an inch of wood beyond the bark is required to be removed to ensure that all of the potentially diseased material has been removed before it is transported to another area.

I also would administer this definition by compliance agreement with any business and through the compliance agreement can address bark removal with an understanding of their processing procedures to insure compliance to the rule’s intent to manage spread of the disease and minimize impacts to the business.

Leaving the definition as stated would not impact processed kiln dried lumber even if bark and ½ of wood is included in the lumber as the kiln drying process would kill the walnut twig beetle.

On January 8, 2013, the Hearing Officers met with Phillip Marshall to discuss further Jackson's comments, the Department's response to those comments, and the development process for rules (including particularly definitions). The Indiana State Entomologist concurred with Jackson's assertion *Geosmithia morbid sp. nov* is not believed to be present in the wood beyond the cambium. Removal of the additional one-half inch of wood interior to the cambium was not critical to addressing thousand cankers disease but was essential for other diseases. He wanted to avoid developing a definition of "bark" for thousand cankers disease that would be applied to quarantines for other diseases and would cause those quarantines to be ineffective.

Jackson's suggested modification should be included to avoid unnecessary cost to the hardwood lumber (and particularly the walnut lumber) industry. An additional one-half inch of wood interior to the cambium should not be included in the definition of "bark" in 312 IAC § 18-3-24.

At the same time, assurances should be made to the Indiana State Entomologist that the definition of "bark" applicable to this quarantine is not generalized to other quarantines. The Hearing Officers observe the definition subsection (subsection (c)) states the definitions apply only to 312 IAC 18-3-24. No automatic migration of the definition occurs to the more-broadly applied definitions contained in 312 IAC § 1 or 312 IAC § 18-1, and an initiative to cause this migration is not recommended. Inclusion of one-half inch interior to the cambium is not the ordinary dictionary definition of "bark". See, for example, THE AMERICAN HERITAGE DICTIONARY (Second College Edition 1985) in which "bark" is defined as the "outer covering of the woody stems, branches, roots, and main trunks of trees and other woody plants *as distinguished from the cambium and inner wood.*" Emphasis supplied by Hearing Officers. Finally, the limited application of the definition in 312 IAC § 18-3-24(c)(1) can be emphasized by directing its application to "walnut" rather than to trees, generally.

The definition of "bark" offered in the language published following preliminary adoption also suffers because the term "bark" is again used in the definition. For these reasons, the hearing officers recommend the definition in (c)(1) be modified to read as follows:

(1) “Bark” means the natural external covering of the woody stems, branches, twigs, knots, bark pockets, and roots of walnut, including the vascular cambium.

Jackson seeks amendment to the proposed definition of “regulated area” at subsection (c)(4). Jackson suggested a listing that would include “only the quarantined and buffered counties in Pennsylvania, Tennessee, and Virginia determined to have [Thousand Cankers Disease] as defined by [Federal] regulatory authorities. ...The disease has been found in very few counties in these states and we feel that it is overly prohibitive to quarantine the three states in their entirety.”

In his memorandum, the State Entomologist responded:

Appropriate surveying methods are still being developed for this pest as it is relatively new to this part of the country. Though only a few counties within the infested states have been found positive for the disease complex, it is probable that the disease exists in other areas that have not been found as yet. With under developed survey tools as well as the extent of damage that is done to a tree in a relatively short amount of time it is likely that more populations of this pest complex will be found as outreach efforts to the general public are undertaken. As other counties become positive within infested states the Indiana code would be forced to continue to adjust to include additional counties within these states. “Buffered counties” as suggested by...[Jackson] would include parts of other states that are not currently under quarantine as they are adjacent to infested counties (Maryland, West Virginia, and North Carolina). ...[E]xperience with prior rules and the use of county or township level quarantines has led to confusion for the industry within the state of Indiana let alone county level quarantines of other states. Thus it is better for clarity to use the state level quarantine.

...
There is a cost for the inspection and phytosanitary document from the originating state which is minimal, and the fumigation is a low cost compared to the value of the product. And as we have worked with the businesses, we have amended the compliance agreement to remove unneeded requirements and to accommodate their business operation while still providing management to prevent spread of the disease.

Thus, I do not recommend this suggested change as I feel I can manage this with the walnut industry through compliance agreements.

The response by the Indiana State Entomologist in this regard is convincing. The change to the definition of “regulated area” in (c)(4), which is sought by Jackson, is not recommended.

Jackson urges with respect to the definition for “regulated articles” in 312 IAC § 18-3-24(c)(5):

The requirement for square edges is not necessary if the material is kiln dried, as all insects will be killed by the drying process. Furthermore, producing 100% square edged material is not practical in our business and would be cost prohibitive. We request that the words “with square edges” be stricken from this paragraph.

As published following preliminary adoption, the definition for “regulated articles” in proposed (c)(5) reads:

- (5) “Regulated articles” means each of the following:**
- (A) The walnut twig beetle in any living stage of development.**
 - (B) *Geosmithia morbida* sp. nov.**
 - (C) Any of the following originating from or transiting through a regulated area:**
 - (i) Firewood of any nonconiferous species.**
 - (ii) Plants and plant parts of walnut, including the following:**
 - (AA) Nursery stock.**
 - (BB) Budwood.**
 - (CC) Scionwood.**
 - (DD) Green lumber.**
 - (EE) Other material whether living or dead, such as logs, stumps, roots, branches, and chips.**
 - (FF) Exempted plant parts of walnut are nuts, nut meats, hulls, processed lumber that is one hundred percent (100%) bark free, kiln-dried with square edges and finished wood products without bark (for example, furniture, instruments, and gun stocks).**

In his memorandum, the Indiana State Entomologist concurred with striking the term “square edges” for timber that was kiln-dried, with modified language to read as follows:

(FF) Exempted plant parts of walnut are nuts, nut meats, hulls, processed lumber that is one hundred percent (100%) bark free, processed lumber that is kiln-dried ~~with square edges~~ and finished wood products without bark (for example, furniture, instruments, and gun stocks.)

He explained:

With this change, processed lumber that is one hundred percent (100%) bark free could be lumber that is air drying. And some businesses may consider this green lumber since it still has moisture content similar to the time of cutting the tree in the woods and at the time of sawing logs into lumber at the mill if the processed lumber has not been in the air drying stack for a long period of time. But as long as it is one hundred percent bark free, it would be exempt from the rule. A compliance agreement would still need to be established to verify compliance with the rule.

The Indiana State Entomologist added it was not the intent of the Division of Entomology and Plant Pathology to seek adoption of a rule that is “cost prohibitive” to the walnut industry. The rule does need to “have scientific grounding (in terms of the biology of the pest complex) in maintaining the quarantines to make sure that the State of Indiana or any regulating entity stands a good chance of catching infested material before it enters [Indiana]. The intent is to protect the resource and assist the industry in continuing to maintain a healthy walnut population for future generations to continue to produce.”

Jackson's comment that seeks to remove the phrase "with square edges" should be adopted. In addition, the items within the listed exemptions should be separated to clarify inclusion of walnut that is either kiln-dried or without bark (as opposed to both). The qualifier "100%" without bark is not productive because "without" means "absent" or "lacking", and not merely a "small amount". The exemption contained in proposed (c)(5)(EE) is also somewhat obscured because of its position, without introduction, in a listing of inclusions.

With deletion of the terms "with square edges" and "100%", clarification that walnut qualifies for exemption if it is either "without bark" or "kiln-dried", and an opening qualifier within the listing of regulated articles that exemptions are set forth in clause (E), the Hearing Officers recommend subdivision (c)(5) be modified from language published following preliminary adoption to read as follows:

(5) Except as exempted by clause (E), "regulated article" means each of the following:

(A) The walnut twig beetle in any living stage of development.

(B) *Geosmithia morbida* sp. nov.

(C) Firewood of any nonconiferous species.

(D) Plants and plant parts of walnut, whether living or dead, including the following:

(i) Nursery stock.

(ii) Budwood.

(iii) Scionwood.

(iv) Logs.

(v) Stumps.

(vi) Roots.

(vii) Branches.

(viii) Chips.

(ix) Any similar material.

(E) Exempted from a regulated article is each of the following:

(i) Nuts, nut meats, and hulls.

(ii) Processed lumber without bark.

(iii) Processed lumber that is kiln-dried.

(iv) Finished wood products without bark. Examples are furniture, instruments, and gun stocks.

According to the Economic Impact Statement by the Division of Entomology and Plant Pathology, the current estimated value of walnut in Indiana is "\$800,000,000 in saw log value, several million in veneer log value, as well as the aesthetic and wildlife value that cannot be

estimated.” If given final adoption, 312 IAC § 18-3-24 would provide permanent standards to regulate the walnut twig beetle (*Pityophthorus juglandis*) and *Geosmithia morbida*. The standards are currently implemented through a temporary rule at LSA Document #12-494(E), and the Indiana State Entomologist has reported excellent cooperation by the industry in achieving compliance. The temporary rule is scheduled to expire on August 12, 2013. Indiana and other States participate in national efforts to quarantine pests or pathogens, including walnut twig beetles and *Geosmithia morbida*. Through the pest control compact, Indiana pledged “to each other [S]tate... [to] employ its best efforts to eradicate, or control within the strictest practicable limits, all pests or pathogens.” IC § 14-24-4.5-6. As modified and set forth in “Exhibit A”, proposed 312 § 18-3-24 will help deter the introduction of walnut twig beetles and *Geosmithia morbida* into Indiana and their spread to other States. The Hearing Officers recommend 312 IAC § 18-3-24 be given final adoption as set forth in “Exhibit A”.

Dated: January 11, 2012

Jennifer M. Kane
Hearing Officer

Stephen L. Lucas
Hearing Officer

TITLE 312 NATURAL RESOURCES COMMISSION

Final Rule
LSA Document #12-511(F)

DIGEST

Adds 312 IAC 18-3-24 pertaining to entomology and plant pathology to regulate the walnut twig beetle (*Pityophthorus juglandis*) and *Geosmithia morbida* sp. nov, a fungus that kills walnut trees. Effective 30 days after filing with the Publisher.

312 IAC 18-3-24

SECTION 1. 312 IAC 18-3-24 IS ADDED TO READ AS FOLLOWS:

312 IAC 18-3-24 Control of thousand cankers disease

Authority: IC 14-10-2-4; IC 14-24-3

Affected: IC 14-24

Sec. 24. (a) The walnut twig beetle (*Pityophthorus juglandis*) is:

- (1) a pest or pathogen; and**
- (2) regulated under this section.**

(b) *Geosmithia morbida* sp. nov is:

- (1) a pest or pathogen; and**
- (2) regulated under this section.**

(c) The definitions in 312 IAC 1, 312 IAC 18-1, and the following apply throughout this section:

- (1) “Bark” means the natural external covering of the woody stems, branches, twigs, knots, bark pockets, and roots of walnut, including the vascular cambium.**
- (2) “Compliance agreement” means a written agreement between the state entomologist and a person that moves a regulated article into Indiana.**
- (3) “Move” means to:**
 - (A) ship;**
 - (B) offer for shipment;**
 - (C) receive for transportation;**
 - (D) transport;**
 - (E) carry; or**
 - (F) allow to move or ship.**
- (4) “Regulated area” refers to each of the following:**
 - (A) Arizona.**
 - (B) California.**
 - (C) Colorado.**
 - (D) Idaho.**
 - (E) Nevada.**

- (F) New Mexico.
 - (G) Oregon.
 - (H) Pennsylvania.
 - (I) Tennessee.
 - (J) Utah.
 - (K) Virginia.
 - (L) Washington.
 - (M) Another area of the United States determined by the state entomologist to have thousand cankers disease.
- (5) Except as exempted by clause (E), “regulated article” means each of the following:
- (A) The walnut twig beetle in any living stage of development.
 - (B) *Geosmithia morbida* sp. nov.
 - (C) Firewood of any nonconiferous species.
 - (D) Plants and plant parts of walnut, whether living or dead, including the following:
 - (i) Nursery stock.
 - (ii) Budwood.
 - (iii) Scionwood.
 - (iv) Logs.
 - (v) Stumps.
 - (vi) Roots.
 - (vii) Branches.
 - (viii) Chips.
 - (ix) Any similar material.
 - (E) Exempted from a regulated article is each of the following:
 - (i) Nuts, nut meats, and hulls.
 - (ii) Processed lumber without bark.
 - (iii) Processed lumber that is kiln-dried.
 - (iv) Finished wood products without bark. Examples are furniture, instruments, and gun stocks.
- (6) “State plant regulatory official” means the national plant board member of the state of origin.
- (7) “Thousand cankers disease” refers to a lethal insect-fungal pathogen pest complex of walnut that has been detected in the states identified in subdivision (4) and that is occasioned by the presence of the walnut twig beetle and *Geosmithia morbida* sp. nov.
- (8) “Walnut” means *Juglans* spp.
- (d) A person must not move any regulated articles into or through Indiana unless the person:
- (1) obtains a compliance agreement from the division and ensures a copy of the compliance agreement remains with the regulated article during transit within Indiana;
 - (2) has the regulated article inspected at the point of origin by a state department of agriculture or state regulatory official; and
 - (3) delivers a phytosanitary certificate, issued by the state plant regulatory official, to the state entomologist at least twenty-four (24) hours before the regulated article enters Indiana.
- (Natural Resources Commission; 312 IAC 18-3-24)*